

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CT ESPRESSO LLC,	:	
	:	
Plaintiff,	:	
	:	22cv377 (DLC)
-v-	:	
	:	<u>OPINION AND ORDER</u>
LAVAZZA PREMIUM COFFEES CORP., LUIGI	:	
LAVAZZA S.P.A., and JOHN DOES 1-10,	:	
	:	
Defendants.	:	
	:	
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APPEARANCES:

For plaintiff:  
Sandra Adele Hudak  
Mark Berkowitz  
Tarter Krinsky & Drogin LLP  
1350 Broadway  
New York, NY 10018

For defendants:  
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DENISE COTE, District Judge:

Plaintiff CT Espresso LLC ("CT Espresso") has brought this suit against Lavazza Premium Coffees Corp. ("Lavazza USA"), Luigi Lavazza S.p.A. ("Lavazza Italy," together "Lavazza") and John Does 1-10 for inaccurately reporting to Amazon.com that the plaintiff was selling a counterfeit version of the defendants'

coffee. The defendants have moved to dismiss all of the plaintiff's claims except for its claim for breach of contract. For the following reasons, the motion is granted.

### **Background**

Unless otherwise noted, the following facts are taken from the First Amended Complaint ("FAC") and exhibits attached thereto, and are assumed to be true for the purposes of this motion. Lavazza Italy manufactures coffee products, which Lavazza USA distributes in the United States. CT Espresso purchases and resells Lavazza's coffee products through its Amazon.com ("Amazon") storefront, RLM Coffee.

In 2018 and 2019, CT Espresso purchased Lavazza products for resale directly from the defendants. The parties thereafter had a dispute over the payment of certain invoices and the unauthorized sale of certain products. The parties resolved the dispute through a settlement agreement, pursuant to which Lavazza agreed that it would "file no further complaints, actions, or other adverse notices" relevant to their dispute "against CT [Espresso] or its online outlets, including RLM Coffee and including such complaints or notices to Amazon, so long as CT [Espresso] fully complies with the terms of this Agreement."

In November of 2021, the defendants placed an order from the RLM Coffee storefront in order to confirm the authenticity

of the Lavazza-branded coffee being sold there. The coffee was authentic. Nevertheless, the defendants submitted seven reports to Amazon (the "Amazon Complaints") asserting that RLM Coffee was selling counterfeit Lavazza products. CT Espresso then contacted Lavazza to demand withdrawal of the Amazon Complaints. Lavazza made a settlement offer, which it then quickly withdrew. CT Espresso again demanded withdrawal of the Amazon Complaints, as well as compensation for damage caused. On November 24, 2021, Lavazza withdrew the Amazon Complaints, explaining to CT Espresso that it had verified the authenticity of the products after a "second level check."

While the Amazon Complaints were pending, Amazon suspended CT Espresso's account, preventing it from making sales. Additionally, since the Amazon Complaints were filed, the RLM Storefront has lost the "buy box" -- a section of Amazon's product details page in which customers can add a product to their cart, and through which the vast majority of sales on Amazon occur. CT Espresso alleges that it has suffered over \$300,000 in damages due to lost sales, expired product, and loss of the buy box.

CT Espresso filed this action on January 14, 2022 before the Honorable Vernon S. Broderick, bringing claims for breach of contract, defamation, and trade libel. On March 22, the

defendants moved to dismiss the claims for defamation and trade libel. That motion became fully submitted on April 12.

On June 21, Judge Broderick ordered CT Espresso to file an amended complaint to cure deficiencies in the original complaint's jurisdictional allegations. CT Espresso submitted the FAC on July 5, remedying the jurisdictional defects and adding a claim for tortious interference with a contract and business relations.<sup>1</sup> The defendants submitted a renewed motion to dismiss on August 2, moving to dismiss the plaintiff's claims for defamation, trade libel, and tortious interference. The case was transferred to this Court on August 17. The motion became fully submitted on August 23.

### **Discussion**

To survive a motion to dismiss for failure to state a claim, the complaint "must plead enough facts to state a claim to relief that is plausible on its face." Green v. Dep't of Educ. of City of New York, 16 F.4th 1070, 1076-77 (2d Cir. 2021) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads

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<sup>1</sup> This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a), because there is complete diversity between the parties, and the amount in controversy exceeds \$75,000. The plaintiff is a limited liability company owned by two residents of Florida, defendant Lavazza USA is a Delaware corporation with its principal place of business in New York, and defendant Lavazza Italy is an Italian corporation with its principal place of business in Italy.

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Charles v. Orange County, 925 F.3d 73, 81 (2d Cir. 2019) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). “In determining if a claim is sufficiently plausible to withstand dismissal,” a court “accept[s] all factual allegations as true” and “draw[s] all reasonable inferences in favor of the plaintiffs.” Melendez v. City of New York, 16 F.4th 992, 1010 (2d Cir. 2021) (citation omitted).

#### I. Defamation and Trade Libel

CT Espresso has brought claims for defamation and trade libel. Although defamation and trade libel provide similar causes of action, they apply to different kinds of statements. Defamation imposes liability on false statements “of and concerning” the plaintiff. Three Amigos SJL Rest., Inc. v. CBS News Inc., 28 N.Y.3d 82, 86 (2016).<sup>2</sup> Trade libel, on the other hand, imposes liability on false statements “about the plaintiff’s business of a kind calculated to prevent others from dealing with the plaintiff.” Banco Popular N. Am. v. Lieberman, 905 N.Y.S.2d 82, 85 (1st Dep’t 2010).

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<sup>2</sup> The parties’ briefs assume without discussion “that New York Law controls, and such implied consent is sufficient to establish choice of law.” Chau v. Lewis, 771 F.3d 118, 126 (2d Cir. 2014) (citation omitted).

A claim for trade libel imposes a more demanding burden on a plaintiff than a claim for defamation. To state a claim for defamation under New York law, a plaintiff must allege "(1) a written defamatory factual statement concerning the plaintiff; (2) publication to a third party; (3) fault; (4) falsity of the defamatory statement; and (5) special damages or per se actionability." Chau v. Lewis, 771 F.3d 118, 126-27 (2d Cir. 2014). A claim for trade libel, however, requires that the false statement about the plaintiff's product be made knowingly, and that the plaintiff allege "special damages, in the form of actual lost dealings." Banco Popular N. Am., 905 N.Y.S.2d at 85. Accordingly, when "the statement is confined to denigrating the quality of the business' goods or services," it is actionable "only if malice and special damages are proven." Ruder & Finn Inc. v. Seaboard Sur. Co., 52 N.Y.2d 663, 670-71 (1981).

The defendants' accusation that the CT Espresso's products were "counterfeit" provides the basis for CT Espresso's defamation and trade libel causes of action. Because this statement "is confined to denigrating the quality of the [plaintiff's] goods," CT Espresso must allege "malice and

special damages.” Id. And because it has not done so, its claims for trade libel and defamation must be dismissed.<sup>3</sup>

#### A. Malice

CT Espresso argues that it has sufficiently alleged malice because it has alleged that the defendants tested its products before reporting them to Amazon, and that upon information and belief, this test must have confirmed the products’ authenticity. CT Espresso also notes the defendants’ admission that an additional check confirmed the products’ authenticity.

These allegations are insufficient to give rise to a plausible claim for malice. Although CT Espresso alleges that the defendants knew that its products were authentic because the initial test showed as much, this allegation is made only on “information and belief.” CT Espresso argues that an allegation based on information and belief is appropriate here because “allegations may be based on information and belief when facts are peculiarly within the opposing party’s knowledge.” United States ex rel. Chorchos v. Am. Med. Response, Inc., 865 F.3d 71, 81-82 (2d Cir. 2017) (citation omitted). But even “[w]here pleading is permitted on information and belief, a complaint must adduce specific facts” supporting the relevant inference

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<sup>3</sup> The Court need not determine whether the defendants’ statements in the Amazon Complaints are privileged, because CT Espresso has failed to state a claim for defamation or trade libel regardless.

"or it will not satisfy even a relaxed pleading standard."

Wexner v. First Manhattan Co., 902 F.2d 169, 172 (2d Cir. 1990).

Because the FAC alleges only on information and belief that the defendants' initial test confirmed the products' authenticity, and because its allegations of malice are otherwise conclusory, CT Espresso has not plausibly alleged that the defendants knew of the falsity of their statements at the time they made them.

CT Espresso argues that its allegation of malice is nevertheless sufficient because the defendants eventually recognized that the products were not counterfeit. But an allegation that the defendants' claims were eventually shown to be false does not give rise to an inference that the defendants knew they were false at the time; falsity is a distinct element of a trade libel or defamation claim. See Tannerite Sports, LLC v. NBCUniversal News Group, 864 F.3d 236, 247 (2d Cir. 2017).

CT Espresso has not alleged, for example, any specific facts to show that the defendants' initial test was obviously unreliable, or that its accusations were "inherently improbable." Biro v. Conde Nast, 807 F.3d 541, 546 (2d Cir. 2015) (explaining the kinds of facts that may support an allegation for malice).

Accordingly, CT Espresso has not plausibly alleged malice.

#### B. Special Damages

Finally, CT Espresso has not stated a claim for trade libel because it has not pled special damages. New York law requires



"specific itemization of damages" to support a trade libel claim. Fashion Boutique of Short Hills, Inc. v. Fendi USA, Inc., 314 F.3d 48, 59 (2d Cir. 2002). "Where loss of customers constitutes the alleged special damages, the individuals who ceased to be customers, or who refused to purchase, must be named and the exact damages itemized." Id. (quoting Drug Research Corp. v. Curtis Publ'g Co., 7 N.Y.2d 435, 441-42 (1960)).

CT Espresso has alleged that it lost \$25,000 in expired inventory and \$300,000 in lost sales as a result of the Amazon Complaints. It has not itemized any of its losses, however, and has not named a single customer who stopped purchasing or decided not to purchase its products. As numerous courts applying New York law have held, such "round figure" allegations are insufficient to plead special damages. See Soter Techs., LLC v. IP Video Corp., 523 F. Supp. 3d 389, 410-11 (S.D.N.Y. 2021) (listing cases). Accordingly, CT Espresso's claims for trade libel and defamation must be dismissed.

## II. Tortious Interference with a Contract

The defendants have moved to dismiss CT Espresso's claim for tortious interference with a contract. Under New York law, tortious interference with a contract has five elements: "(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of the contract; (3)

the defendant's intentional procurement of the third-party's breach of the contract without justification; (4) actual breach of the contract; and (5) damages resulting therefrom." Kirch v. Liberty Media Corp., 449 F.3d 388, 401 (2d Cir. 2006) (citation omitted).

CT Espresso has not alleged that the defendants' conduct caused it to breach any contract with a third party. Although the FAC generally alleges that CT Espresso had a contractual relationship with Amazon that allowed it to sell its products on Amazon, CT Espresso points to no specific provisions of any contract that it asserts has been violated, and does not argue or allege (even in a conclusory manner) that any contract with Amazon has been breached. Accordingly, CT Espresso has not stated a claim for tortious interference with a contract.

### III. Tortious Interference with Business Relations

Finally, the defendants have moved to dismiss CT Espresso's claim for tortious interference with business relations. Unlike tortious interference with a contract, tortious interference with business relations does not require the plaintiff to allege a contractual relationship with a third party. See Carvel Corp. v. Noonan, 3 N.Y.3d 182, 189-90 (2004). To recover for tortious interference with business relations, however, the plaintiff must plausibly allege that the defendant's interference with a business relationship was "criminal or independently tortious,"

or that it was “for the sole purpose of inflicting intentional harm on plaintiffs.” Id. at 190 (citation omitted).

CT Espresso has not alleged that the defendants interfered with its relationship with Amazon using unlawful means or with an improper motive. CT Espresso argues that the defendants filed the Amazon Complaints intending to interfere with its relationship with Amazon. As explained above, however, CT Espresso has not plausibly alleged that the defendants knew its accusations of counterfeiting were false, much less that they made those accusations for the purposes of harming CT Espresso. Nor has CT Espresso identified any tort or crime applicable to the defendants’ conduct. Accordingly, the claim for tortious interference with business relations must be dismissed.

#### IV. Leave to Amend

CT Espresso has requested that, to the extent any of its claims are dismissed, it be granted leave to amend the FAC. In general, leave to amend should be “freely give[n] when justice so requires.” Fed. R. Civ. P. 15(a)(2). Leave to amend may be denied, however, “for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party.” Eastman Kodak Co. v. Henry Bath LLC, 936 F.3d 86, 98 (2d Cir. 2019) (citation omitted). Additionally, a plaintiff “need not be given leave to amend if it fails to specify . . . how amendment would cure the pleading deficiencies in its

complaint.” TechnoMarine SA v. Giftports, Inc., 758 F.3d 493, 505 (2d Cir. 2014).

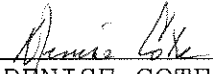
Leave to amend is not appropriate here. CT Espresso already had an opportunity to amend its complaint after the defendants’ original motion to dismiss was submitted and fully briefed. That motion also sought dismissal because CT Espresso had not sufficiently alleged malice. Rather than significantly supplementing its allegations of malice, however, CT Espresso continued to rely on conclusory allegations and allegations on information and belief. Additionally, CT Espresso has not explained what additional facts it could allege to cure the defects in the FAC. It has not, for example, suggested that it could identify specific customers whose sales it lost, provide additional allegations to show that Lavazza knew its claims of counterfeiting were false, or point to any contractual provision with Amazon that it believes has been breached. Accordingly, CT Espresso’s request for leave to amend is denied.

### **Conclusion**

The defendants’ August 2 motion to dismiss is granted. CT Espresso’s claims for defamation, trade libel, and tortious

interference with a contract and business relations are dismissed.

Dated: New York, New York  
September 28, 2022

  
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DENISE COTE  
United States District Judge